EXEMPTION FROM SERVICE TAX

General Exemptions

1. *What are the exemptions provided to Services Provided to United Nations or an International Organization?*

All the taxable services provided by any person to the United Nations or International Organization are exempted from the whole of Service Tax for this purpose. International Organization means an international organization declared by the Central Government in pursuance of section 3 of the United Nations Privileges and Immunities) Act, 1947.

The illustrative list of specified international organizations has been mentioned below & for this notification has been proposed to be issued, which is as follows:

- **i.** *International Civil Aviation Organization.*
- **ii.** *World Health Organization.*
- **iii.** *International Labour Organization.*
- **iv.** *Food and Agricultural Organization of the United Nations.*
- **v.** *United Nations Educational, Scientific and Cultural Organization.*
- **vi.** *International Monetary Fund.*
- **vii.** *International Bank of Reconstruction and Development.*
- **viii.** *Universal Postal Union.*
- **ix.** *International Telecommunication Union.*
- **x.** *World Meteorological Organization.*
- **xi.** *Permanent Central Opium Board.*
- **xii.** *International Hydrographic Bureau.*
- **xiii.** *Commissioner for Indus Waters. Government of Pakistan and his Advisers and Assistants.*
- **xiv.** *Asian African Legal Consultative Committee*
- **xv.** *Commonwealth Asia Pacific Youth Development Centre*
- **xvi.** *Delegation of Commission of European Committee*
- **xvii.** *Customs Co-operation Council*
- **xviii.** *Asia Pacific Telecommunity*
- **xix.** *International Centre of Public Enterprises in Developing Countries, Ljubljana (Yugoslavia)*
- **xx.** *International Centre for Genetic Engineering and Biotechnology*

xxi. *Asian Development Bank*

xxii. *South Asian Association for Regional Co-operation*

xxiii. *International Jute Organization, Dhaka, Bangladesh*

2. ***What* are the conditions for exemption of Diplomatic mission from 1st July 2012 ?**

1) *New Notification No. 27/2012-ST has been introduced for providing exemption to services provided by any person for the official use of Foreign Diplomatic Mission, for the official use of a foreign diplomatic mission or consular post in India, for personal use or for the family members of diplomatic agents or career consular officers posted therein from whole of the service tax leviable under section 66B of the said act,*

subject to the following conditions namely:

that the foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein, are entitled to exemption from service tax, as stipulated in the certificate issued by the Protocol Division of the Ministry of External Affairs, based on the principle of reciprocity;

i. *that in case of diplomatic agents or career consular officers posted in the foreign diplomatic mission or consular post in India, the Protocol Division of the Ministry of External Affairs or the Protocol Department of the State concerned issues to each of such diplomatic agent or career consular officer an identification card bearing unique identification number and containing a photograph and name of such diplomatic agent or career consular officer and the name of the foreign diplomatic mission or consular post in India, where he is posted;*

ii. *that the head of the foreign diplomatic mission or consular post, or any person of such mission or post authorised by him, shall furnish to the provider of taxable service, a copy of such certificate duly authenticated by him or the authorised person, along with an undertaking in original, signed by him or the authorised person, bearing running serial number commencing from a financial year and stating that the services received are for official purpose of the said foreign diplomatic mission or consular post; or for personal use of the said diplomatic agent or career consular officer or members of his/her family mentioning the unique identification number as appearing in the identification card issued to them and stating that the services received are for personal use of the said diplomatic agent or career consular officer or members of his/her family;*

iii. *that the head of the foreign diplomatic mission or consular post or the authorized person shall maintain an account of the undertakings issued during a financial year and the account shall contain;*

a) the serial number and date of issue of the undertakings;

b) in case of personal use of diplomatic agents or career consular officers posted in the foreign diplomatic mission or consular post in India, the name, designation and unique identification number of the diplomatic agent or career consular officer in favour of whom the undertaking has been issued;

c) the name and the registration number of the provider of taxable service; and

d) the description of taxable service and invoice number.

iv. The invoice or bill, or as the case may be, the challan issued under the provisions contained in rule 4A of the Service Tax Rules, 1994, shall, in addition to the information required to be furnished under the said rule, contain the serial number and the date of the undertaking furnished by the said head of foreign diplomatic mission or consular post or in case of diplomatic agents or career consular officers posted in such foreign diplomatic mission or consular post in India, the unique identification number of the diplomatic agent or career consular officer, as the case may be; and

v. that the provider of taxable service shall retain the documents referred to in the conditions (i), (ii) and (iii) along with a duplicate copy of the invoice issued, for the purposes of verification.

2) In case the Protocol Division of the Ministry of External Affairs, after having issued a certificate to any foreign diplomatic mission or consular post in India or as the case may be, the identification card issued to a diplomatic agent or career consular officer, decides to withdraw any one or both of them subsequently, it shall communicate the withdrawal of such certificate or identification card, as the case may be, to the foreign diplomatic mission or consular post.

3) The exemption from the whole of the service tax granted to the foreign diplomatic mission or consular post in India for official purpose or for the personal use or use of their family members shall not be available from the date of withdrawal of such certificate or identification card, as the case may be.

3. What are the conditions of Exemption to Small Service Provider?

Government has introduced Notification No. 33/2012-ST dated 20th June 2012 in supersession of Notification No. 6/2005-ST dated 1st March 2005 in which Central Government exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of service tax leviable thereon under section 66B of the said Finance Act, 1994:

Provided that nothing contained in this notification shall apply to-

i. taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or

ii. *such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules,1994.*

<u>The exemption contained in this notification shall apply subject to the following conditions, namely:</u>

i. *the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;*

ii. *the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;*

iii. *the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received, during the period in which the service provider avails exemption from payment of service tax under this notification;*

iv. *the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;*

v. *the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;*

vi. *the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;*

vii. *where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and*

viii. *the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.*

4. ***Whether Gross Value of taxable services on which recipient has paid service tax as specified under Section 67(2) of the Finance Act, 1994 read with Service Tax Rules 1994, charged by goods Transport Agency shall be counted for determining aggregate value of small scale exemption ?***

   No, The Gross amount charged by Goods Transport Agency under Section 67 ibid to the recipient of service shall not to be taken into account for determining the aggregate taxable value under the small scale exemption.

5. ***What is the meaning of "brand name" or "Trade name"?***

   "Brand name" or "trade name" means brand name or trade name, whether registered or not i.e. to say, a name or a mark, such as symbol, monogram, logo, label, signature, or a invented word or writing which is used in relation to such specified services for the purpose of indicating or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any identification of the identity of that person.

6. ***How to determine the aggregate value of Rs 10 lakh under small scale exemption notification?***

   "Aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."

7. ***Is there any exemption for developer or units of Special Economic Zone? If yes what are the conditions for such exemption?***

   However, w.e.f. 1st July 2012, Government has superseded the above Notification no. 17/2011, dated 1st March 2011 vide Notification no. 40/2012 in which Central Government exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ and used for the authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

   <u>The exemption contained in this notification shall be subject to the following conditions, namely:—</u>

   a) *the exemption shall be provided by way of refund of service tax paid on the specified services received by a unit located in a SEZ or the developer of SEZ and used for the authorised operations:*

   Provided that where the specified services received in SEZ and used for the *authorised operations are wholly consumed within the SEZ, the person liable to pay service tax has the option not to pay the service tax ab initio instead of the SEZ unit or the developer claiming exemption by way of refund in terms of this notification.*

Explanation.—*For the purposes of this notification, the expression "wholly consumed" refers to such specified services received by the unit of a SEZ or the developer and used for the authorised operations, where the place of provision determinable in accordance with the Place of Provision of Services Rules, 2012(hereinafter referred as the POP Rules) is as under:-*

i. *in respect of services specified in rule 4 of the POP Rules, the place where the services are actually performed is within the SEZ; or*

ii. *in respect of services specified in rule 5 of the POP Rules, the place where the property is located or intended to be located is within the SEZ; or*

iii. *in respect of services other than those falling under clauses (*i*) and (*ii*), the recipient does not own or carry on any business other than the operations in SEZ;*

b) *where the specified services received by the unit of a SEZ or developer are not wholly consumed within SEZ, maximum refund shall be restricted to the extent of the ratio of export turnover of goods and services multiplied by the service tax paid on services other than wholly consumed services to the total turnover for the given period to which the claim relates, i.e.,*

<table>
<tr><td rowspan="2">Refund amount =</td><td>(Export turnover of goods + Service tax paid on services of SEZ Unit/Developer)</td><td>X</td><td>Service tax paid on services other than wholly consumed services (both for SEZ and DTA)</td></tr>
<tr><td colspan="3">Total Turnover for the period</td></tr>
</table>

Explanation.—*For the purposes of condition (b),—*

A. *"refund amount" means the maximum refund that is admissible for the period;*

B. *"export turnover of goods" means the value of final products and intermediate products cleared during the relevant period and exported;*

C. *"export turnover of services" means the value of the export service calculated in the following manner, namely:—*

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period - advances received for export services for which the provision of service has not been completed during the relevant period;

D. *"total turnover" means sum total of the value of—*

a) *all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;*

b) *export turnover of services determined in terms of clause (C) and the value of all other services, during the relevant period; and*

c) *for the purpose of claiming exemption, the Unit of a SEZ or developer shall obtain a list of services that are liable to service tax as are required for the authorised operations approved where the specified services received by the unit of a SEZ or developer are not wholly by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ;*

d) *for the purpose of claiming ab initio exemption, the unit of a SEZ or developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, in addition to the list specified under condition (c); the unit of a SEZ or developer who does not own or carry on any business other than the operations in SEZ, shall declare to that effect in Form A-1;*

e) *the unit of a SEZ or developer claiming the exemption shall declare that the specified services on which exemption and/or refund is claimed, have been used for the authorised operations;*

f) *the unit of a SEZ or developer claiming the exemption by way of refund, should have paid the amount indicated in the invoice, bill or as the case may be, challan, including the service tax payable, to the person liable to pay the said tax or the amount of service tax payable under reverse charge, as the case may be, under the provisions of the said Act;*

g) *no CENVAT credit of service tax paid on the specified services used for the authorised operations in a SEZ has been taken under the CENVAT Credit Rules, 2004;*

h) *no refund shall be available on services wholly consumed for operations in the Domestic Tariff Area (DTA) worked out in the same manner as clauses (i) and (ii) of the explanation to condition (a);*

i) *exemption or refund of service tax paid on the specified services other than wholly consumed services used for the authorised operations in a SEZ shall not be claimed except under this notification;*

j) *the unit of a SEZ or developer, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services on which exemption is claimed, for authorised operations in the SEZ.*

8. What is the procedure for claiming the benefit of exemption in respect of SEZ?

The following procedure should be adopted for claiming the benefit of the exemption of SEZ, namely:—

a) *the unit of a SEZ or developer, who has paid the service tax leviable under section 66B of the said Act shall avail the exemption by filling a claim for refund of service tax paid on specified services used for the authorised operations;*

b) *the unit of a SEZ or developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Act or the rules made thereunder, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the SEZ unit or developer, as the case may be, in Form A- 2;*

c) *the unit of a SEZ or developer who is not so registered under the provisions referred to in clause (b), shall, before filing a claim for refund under this notification, file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the SEZ unit or developer, as the case may be, in Form A-3;*

d) *the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the unit of a SEZ or developer, referred to in clause (c), within seven days from the date of receipt of the said declaration, in Form A-3;*

e) *claim for refund shall be filed, within one year from the end of the month in which actual payment of service tax was made by such developer or unit, to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;*

f) *the refund claim shall be accompanied by the following documents, namely:—*

- ***i.*** *a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee; wherever applicable, a copy of the declaration made in Form A-1;*
- ***ii.*** *invoice or a bill or as the case may be, a challan, issued in accordance with the provisions of the said Act or rules made thereunder, in the name of the unit of a SEZ or developer, by the registered service provider, along with proof of payment for such specified services used for the authorized operations and service tax paid, in original;*
- ***iii.*** *a declaration by the unit of a SEZ or developer, claiming such exemption, to the effect that-*
  - ***A.*** *the specified services on which refund of service tax claimed, has been used for the authorized operations in the SEZ ;*
  - ***B.*** *proper account of the specified services received and used for the authorized operations are maintained by the developer or unit of the SEZ and the same shall be produced to the officer sanctioning refund, on demand;*
  - ***C.*** *accounts or documents furnished by the unit of a SEZ or developer as proof of payment of service tax claimed as refund, based on the invoice, or bill , or as the case may be challan issued by the registered service provider indicating the service tax paid on such specified services, are true and correct in all respects;*

g) *the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after verifying that,—*

i. *the refund claim is complete in all respects;*

ii. *the information furnished in Form A-2 and in supporting documents correctly indicate the service tax involved in the specified services used for the authorised operations in the SEZ, which is claimed as refund, and has been actually paid to the service provider, shall refund the service tax paid on the specified services;*

h) *a service provider shall provide the specified services falling under wholly consumed category, under ab-initio exemption granted by this notification, to a unit of a SEZ or developer, for authorized operations, subject to the submission of list specified in condition (c) under paragraph 2 and a declaration in Form A-1;*

i) *where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the said Act and the rules made there under, as if it is recovery of service tax erroneously refunded;*

9. What are the Exemptions in respect of service provided by TBI/STEP?

Notification no. 32/2012-ST dated 20th June 2012 which comes into effect from 1st July 2012 hereby exempts taxable services, provided or to be provided, by a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India, from the whole of the service tax leviable thereon under section 66B of the said Finance Act, subject to following conditions, namely:—

1. *that the STEP or the TBI, who intends to avail the exemption, shall furnish the requisite information in Format I below containing the details of the incubator along with the information in Format II below received from each incubatee to the concerned Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, before availing the exemption; and*
2. *that the STEP or the TBI shall furnish the information in the said Format I and Format II in the same manner before the 30th day of June of each financial year.*

<u>Specific Exemptions</u>

10. What are the specific exemptions in regard to renting of an immovable property?

With the introduction of Notification no. 29/2012-ST dated 20th June 2012, it supersedes Notification no. 22/2007 in which Central Government exempts the taxable service of renting of immovable property, from so much of the service tax leviable thereon under section 66B of the said Finance Act, as in excess of the service tax calculated on a value which is equivalent to the gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies:

Provided that any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons shall not be treated as property tax for the purposes of deduction from the gross amount charged:

Provided further that wherever the period for which property tax paid is different from the period for which service tax is paid or payable, property tax proportionate to the period for which service tax is paid or payable shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the immovable property for the said period, for the purposes of levy of service tax.

***Example**:*

Property tax paid for April to September = Rs. 12,000/-

Rent received for April= Rs. 1, 00,000/-

*Service tax payable for April = Rs. 98,000/- (1,00,000 – 12,000/6) * applicable rate of service tax*

11) What are the specific exemptions to specified services received by an exporter of goods?

A) Government has introduced Notification No. 31/2012-ST, dated 20th June 2012 in supersession of the Notification No. 18/2009-ST, dated 7th July, 2009 which hereby exempts the taxable service received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods (hereinafter referred to as the said goods), of the description specified in column (2) of the Table below (hereinafter referred to as the specified service), from the whole of the service tax leviable thereon under section 66B of the said Act, subject to the conditions specified in column (3) of the said Table, namely:-

Table

Sr. No.	***Description of the taxable service***	***Conditions***
(1)	***(2)***	***(3)***
1.	*Service provided to an exporter for transport of the said goods by goods transport agency in a goods carriage from any container freight station or inland container depot to the port or airport, as the case may be, from where the goods are exported; or* *Service provided to an exporter in relation to transport of the said goods by goods transport agency in a goods carriage directly from their place of removal, to an inland container depot, a container freight station, a port or airport, as the case may*	*The exporter shall have to produce the consignment note, by whatever name called, issued in his name.*

	be, from where the goods are exported.	

***Provided that*—**

a) *the exemption shall be available to an exporter who,—*

i. *informs the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory or the regional office or the head office, as the case may be, in Form EXP1 appended to this notification, before availing the said exemption;*

ii. *is registered with an export promotion council sponsored by the Ministry of Commerce or the Ministry of Textiles, as the case may be;*

iii. *is a holder of Import-Export Code Number;*

iv. *is registered under section 69 of the said Act;*

v. *is liable to pay service tax under sub-section (2) of section 68 of said Act, read with item (B) of sub-clause (i) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994, for the specified service;*

b) *the invoice, bill or challan, or any other document by whatever name called issued by the service provider to the exporter, on which the exporter intends to avail exemption, shall be issued in the name of the exporter, showing that the exporter is liable to pay the service tax in terms of item (v) of clause (a);*

c) *the exporter availing the exemption shall file the return in Form EXP2, every six months of the financial year, within fifteen days of the completion of the said six months;*

d) *the exporter shall submit with the half yearly return, after certification, the documents in original specified in clause (b) and the certified copies of the documents specified in column (4) of the said Table;*

e) *the documents enclosed with the return shall contain a certification from the exporter or the authorised person, to the effect that taxable service to which the document pertains, has been received and used for export of goods by mentioning the specific shipping bill number on the said document.*

f) *where the exporter is a proprietorship concern or partnership firm, the documents enclosed with the return shall be certified by the exporter himself and where the exporter is a limited company, the documents enclosed with the return shall be certified by the person authorised by the Board of Directors;*

B) Exemption has been also provided from so much of the service tax leviable thereon under section 66B of the said Act, as is calculated on a value up to ten percent of the free on board value of export goods for which the said specified service has been used, subject to the conditions specified in column (3) of the said Table, namely

Sr. No.	***Description of the taxable service***	***Conditions***
(1)	***(2)***	***(3)***
1.	*Service provided by a*	*(1) The exporter shall declare the amount of*

	commission agent located outside India and engaged under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him.	*commission paid or payable to the commission agent in the shipping bill or bill of export, as the case may be.* *(2) The exemption shall be limited to the service tax calculated on a value of ten per cent of the free on board value of export goods for which the said service has been used.* *(3) The exemption shall not be available on the export of canalised item, project export, or export financed under lines of credit extended by the Government of India or EXIM Bank, or export made by Indian partner in a company with equity participation in an overseas joint venture or wholly owned subsidiary.* *(4) The exporter shall submit with the half-yearly return after certification of the same as specified in clause (g) of the proviso—* *(* **i** *) the original documents showing actual payment of commission to the commission agent; and* *(* **ii** *) a copy of the agreement or contract entered into between the commission agent located outside India and the exporter in relation to sale of export goods outside India:*

Provided that-

(a) the exemption shall be available to an exporter who,-

(i) informs the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the factory or the regional office or the head office, as the case may be, in Form EXP3 appended to this notification, before availing the said exemption;

(ii) is registered with an export promotion council sponsored by the Ministry of Commerce or the Ministry of Textiles, as the case may be;

(iii) is a holder of Import-Export Code Number;

(iv) is registered under section 69 of the said Act;

(v) is liable to pay service tax under sub-section (2) of section 68 of said Act, read with item (G) of sub-clause (i) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules,1994, for the specified service;

(b) the invoice, bill or challan, or any other document by whatever name called issued by the service provider to the exporter, on which the exporter intends to avail exemption, shall be issued in the name of the exporter.

(c) the exporter availing the exemption shall file the return in Form EXP4, every six months of the financial year, within fifteen days of the completion of the said six months;

(d) the exporter shall submit with the half yearly return, after certification, the documents in original specified in clause (b) and the certified copies of the documents specified in column (3) of the said Table;

(e) the documents enclosed with the return shall contain a certification from the exporter or the authorised person, to the effect that specified service to which the document pertains, has been received and used for export of goods by mentioning the specific shipping bill number on the said document.

(f) where the exporter is an individual or a proprietorship concern or an HUF or a partnership firm, the documents enclosed with the return shall be certified by the exporter himself and where the exporter is any other person, the documents enclosed with the return shall be certified by the person authorised by the Board of Directors or any other competent person;

(g) where the amount of commission charged in respect of the specified service exceeds ten per cent. of the free on board value of the export then, the service tax shall be paid within the period specified under rule 6 of the Service Tax Rules, 1994, on such amount, which is in excess of the said ten per cent.